THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.2966 of 1999

DATED: 05.12.2007

Between:

G. Krishna Murthy

.. Petitioner

And

Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur, Ananthapur District and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.2966 of 1999

ORDER:

This writ petition is filed challenging the award, dated 30.11.1996, passed in I.D.No.82 of 1994 by the 1st respondent-Industrial Tribunal-cum-Labour Court, Ananthapur, insofar as denying backwages and continuity of service to the petitioner, by directing the management to reinstate the petitioner as a fresh conductor.

2. Petitioner is the workman and respondents 2 and 3 are the management. It appears, the petitioner, while conducting the bus bearing No. AEX 3957 on route Adoni to Bapuram, on 17.08.1992, a check was exercised by TTIs at 11.00 hours at stage No.9/10, wherein certain cash and ticket irregularities said to have committed by the petitioner were found. Hence, the petitioner was served a charge memo and, basing on the same, charge sheet was issued on 25.08.1992, enumerating the following charges:-

1. For having violated the rule Issue and Start which constitutes misconduct in terms of Clause (vi) (a) of Regulation 28 of APSRTC Employees (Conduct) Regulations, 1963.

2. For having failed to issue tickets to 28 (twenty eight) individual passengers who boarded the bus at

Kowthalam and found alighting without tickets at Bapuram check post ex-stages 8 to 9/10 in spite of collecting the requisite ticket fare at Rs.1-75 each which constitutes misconduct in terms of clause (vi) (a) and (x) of Regulation 28 of APSRTC Employees (Conduct) Regulations 1963.

3. For having failed to collect the fare and issue tickets to 4 (four) individual passengers who boarded the bus at Erladinne 'X' road and found alighting without tickets Ex.stages 9 to 9/10 which constitutes misconduct in terms of Clause (vi) (a) of Regulation 28 of APSRTC Employees (Conduct) Regulations, 1963.

4. For having failed to close the tray numbers of all denominations in the service SR No.3414223, dt. 17-8-1992 against the stage No.9 though the bus had reached the stage No.9/10 which constitutes misconduct in terms of clause (xxxii) of Regulation 28 of APSRTC Employees (Conduct) Regulations 1963.

5. For having failed to show the ticket issues in the relevant issues column provided against each denomination in the SR and also failed to show the no. of passengers traveling in the bus in the relevant column provided in the S.R., which constitutes misconduct in terms of Clause (xxxii) of Regulation 28 of APSRTC Employees (Conduct) Regulations, 1963.

After conducting a detailed enquiry into the matter, as per the procedure in vogue, the disciplinary authority passed orders on 30.03.1993 imposing a punishment of removal from service on the petitioner. The appeal preferred by the petitioner, challenging the said order, was dismissed by the appellate authority on 08.07.1993. Therefore, the petitioner had to approach the Labour Court by filing a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947

(for short 'the Act').

3. It was the case of the petitioner that enquiry was not properly conducted and absolutely there was no evidence to hold him guilty of the charges. In fact, he was allotted double duty on the day of check and, therefore, he was tired and even then he tried to discharge his duties, but ultimately fell unconscious. There may be some lapses on his part due to tiredness, but absolutely there was no misconduct. Further, even if it is assumed that there was some misconduct on his part, the punishment of removal from service is disproportionate to that of the misconduct. Therefore, the removal order passed by the management is liable to be set aside.

4. Respondent-management filed a detailed counter denying the allegations made by the petitioner. It was stated that the petitioner was given full and fair opportunity to defend himself and the charges are proved and, since the charges are grave in nature, no lesser punishment to that of removal from service could have been imposed by the disciplinary authority.

5. Before the Labour Court, though no oral or documentary evidence was adduced on either side, on the basis of material placed before it, the Labour Court held that, except charge No.2, all other charges were proved and charge No.2 was partly proved and the explanation of the petitioner has to be accepted for the purpose of consideration of the gravity of misconduct. Ultimately, the labour Court came to the conclusion that the punishment of removal from service was too harsh, severe and disproportionate to that of the misconduct proved and, as such, passed an award directing the management to reinstate the petitioner into service as fresh conductor. Thereby, the

petitioner was denied of continuity of service, backwages and other attendant benefits. Hence, this writ petition by the petitioner.

6. Learned counsel for the petitioner strenuously contended that the petitioner had ten long years of unblemished service by the date of his removal from service and, therefore, denying continuity of service and backwages would be unreasonable, while granting reinstatement. Moreover, the bus did not travel more than two fare stages and the Labour Court has categorically held that due to sleeplessness and restlessness only, the petitioner could not collect the fare and issue tickets to the passengers. Therefore, denial of continuity of service and backwages is arbitrary and illegal.

7. Per contra, learned counsel for the management supported the award passed by the Labour Court and stated that the Labour Court itself had taken a lenient view of the matter and ordered reinstatement and, as such, no interference is warranted by this Court, and the writ petition is liable to be dismissed.

8. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

9. Among the charges framed against the petitioner, charges 1, 4 and 5 are procedural in nature and only charges 2 and 3 are main charges. The Labour Court found that charge No.2 is partly proved and other charges are proved. According to charge No.3, the passengers, who boarded at Erladinne X Road, were found alighting without tickets at Ex.stages 9 to 9/10. Thus, the distance between the boarding point and alighting point seems to be very short. However, the Labour Court held that, due to ill health only, the petitioner could

not collect fare and issue tickets and the explanation of the petitioner in this regard has to be accepted for the purpose of consideration of the gravity of the misconduct. As stated above, other charges, though held to be proved, are procedural in nature, inconsequential and overlapping. It was also noticed by the Labour Court that no previous punishments have been alleged against the petitioner either in the removal order or in the order of the appellate authority. In fact, the petitioner had put in ten long years of unblemished service by the time of his removal from service, for which he needs to be commended. Therefore, I am of the opinion that the benefit of continuity of service can be extended to the petitioner, for the purpose of computing his retirement benefits only. However, in the facts and circumstances, no interference is warranted in respect of denial of backwages and other attendant benefits.

10. Under those circumstances, the award, dated 30.11.1996, passed by the Labour Court is modified as under:

> "The respondent-management is directed to reinstate the petitioner into service with continuity of service, but without any backwages and attendant benefits. However, the past service rendered by the petitioner shall be taken into consideration only for the purpose of granting retirement benefits to him, but should not be reckoned for the purpose of seniority and promotion etc."

11. With the above modification, the writ petition is disposed of. No order as to costs.

JUSTICE C.V. RAMULU

5th December, 2007.
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